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NOTE: CHANGES MADE BY THE COURT

5 ATTORNEY FOR DEFENDANT
6 BANK OF AMERICA, N.A.

7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 GREGORY GALVAN,

11 Plaintiff,

12 v.

13 BANK OF AMERICA, N.A.,

14 Defendant.
15

Case No. 2:18-cv-8648-FMO-JPR

STIPULATED PROTECTIVE ORDER

16
17 1. A. PURPOSES AND LIMITATIONS

18 Discovery in this action is likely to involve production of confidential, proprietary or private
19 information for which special protection from public disclosure and from use for any purpose other
20 than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and
21 petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that
22 this Order does not confer blanket protections on all disclosures or responses to discovery and that
23 the protection it affords from public disclosure and use extends only to the limited information or
24 items that are entitled to confidential treatment under the applicable legal principles.

25 B. GOOD CAUSE STATEMENT

26 This action is likely to involve the production of information which the parties believe to
27 be confidential commercial, financial, business or personal information, including confidential
28 medical and other information. The information being produced during discovery in this litigation

STIPULATED PROTECTIVE ORDER

1 may be entitled to protection, including pursuant Gramm-Leach-Bliley Act, 15 U.S.C. §6801 *et*
2 *seq.*, the Health Insurance Portability and Accountability Act of 1996, as amended (“HIPAA”), and
3 other state and federal laws. Accordingly, to expedite the flow of information, to facilitate the
4 prompt resolution of disputes over confidentiality of discovery materials, to adequately protect
5 information the parties believe they are entitled to keep confidential, to ensure that the parties are
6 permitted reasonable necessary uses of such material in preparation for and in the conduct of trial,
7 to address their handling at the end of the litigation, and serve the ends of justice, a protective order
8 for such information is justified in this matter. It is the intent of the parties that information will not
9 be designated as confidential for tactical reasons and that nothing be so designated without a good
10 faith belief that it has been maintained in a confidential, non-public manner, and there is good cause
11 why it should not be part of the public record of this case.

12 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

13 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
14 Protective Order does not entitle them to file confidential information under seal; Local Civil Rule
15 79-5 sets forth the procedures that must be followed and the standards that will be applied when a
16 party seeks permission from the court to file material under seal.

17 There is a strong presumption that the public has a right of access to judicial proceedings
18 and records in civil cases. In connection with non-dispositive motions, good cause must be shown
19 to support a filing under seal. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176
20 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-*
21 *Welbon v. Sony Electronics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective
22 orders require good cause showing), and a specific showing of good cause or compelling reasons
23 with proper evidentiary support and legal justification, must be made with respect to Protected
24 Material that a party seeks to file under seal. The parties’ mere designation of Disclosure or
25 Discovery Material as CONFIDENTIAL does not— without the submission of competent evidence
26 by declaration, establishing that the material sought to be filed under seal qualifies as confidential,
27 privileged, or otherwise protectable—constitute good cause.

Further, if a party requests sealing related to a dispositive motion or trial, then compelling reasons, not only good cause, for the sealing must be shown, and the relief sought shall be narrowly tailored to serve the specific interest to be protected. *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type of information, document, or thing sought to be filed or introduced under seal in connection with a dispositive motion or trial, the party seeking protection must articulate compelling reasons, supported by specific facts and legal justification, for the requested sealing order. Again, competent evidence supporting the application to file documents under seal must be provided by declaration.

Any document that is not confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or otherwise protectable portions of the document, shall be filed. Any application that seeks to file documents under seal in their entirety should include an explanation of why redaction is not feasible.

2. DEFINITIONS

2.1 Action: this pending lawsuit, Gregory Galvan v. Bank of America, N.A., Case No. 2:18-cv-8648-FMO-JPR.

2.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.3 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things,

1 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
2 responses to discovery in this matter.

3 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
4 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
5 consultant in this Action.

6 2.8 House Counsel: attorneys who are employees of a party to this Action. House
7 Counsel does not include Outside Counsel of Record or any other outside counsel.

8 2.9 Non-Party: any natural person, partnership, corporation, association or other legal
9 entity not named as a Party to this action.

10 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
11 Action but are retained to represent or advise a party to this Action and have appeared in this Action
12 on behalf of that party or are affiliated with a law firm that has appeared on behalf of that party,
13 and includes support staff.

14 2.11 Party: any party to this Action, including all of its officers, directors, employees,
15 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
17 Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation support services
19 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
20 storing, or retrieving data in any form or medium) and their employees and subcontractors.

21 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
22 “CONFIDENTIAL.”

23 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
24 Producing Party.

25 3. SCOPE

26 The protections conferred by this Stipulation and Order cover not only Protected Material
27 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
28

1 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
2 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

3 Any use of Protected Material at trial shall be governed by the orders of the trial judge. This
4 Order does not govern the use of Protected Material at trial.

5 4. DURATION

6 Once a case proceeds to trial, information that was designated as CONFIDENTIAL or
7 maintained pursuant to this protective order used or introduced as an exhibit at trial becomes public
8 and will be presumptively available to all members of the public, including the press, unless
9 compelling reasons supported by specific factual findings to proceed otherwise are found by the
10 trial judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”
11 showing for sealing documents produced in discovery from “compelling reasons” standard when
12 merits-related documents are part of court record). Accordingly, the terms of this protective order
13 do not extend beyond the commencement of the trial.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
16 Non-Party that designates information or items for protection under this Order must take care to
17 limit any such designation to specific material that qualifies under the appropriate standards. The
18 Designating Party must designate for protection only those parts of material, documents, items or
19 oral or written communications that qualify so that other portions of the material, documents, items
20 or communications for which protection is not warranted are not swept unjustifiably within the
21 ambit of this Order.

22 Mass, indiscriminate or routinized designations are prohibited. Designations that are shown
23 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
24 encumber the case development process or to impose unnecessary expenses and burdens on other
25 parties) may expose the Designating Party to sanctions.

26 If it comes to a Designating Party’s attention that information or items that it designated for
27 protection do not qualify for protection, that Designating Party must promptly notify all other
28 Parties that it is withdrawing the inapplicable designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see,
2 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure
3 or Discovery Material that qualifies for protection under this Order must be clearly so designated
4 before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
7 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix at a
8 minimum, the legend “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page
9 that contains protected material. If only a portion of the material on a page qualifies for protection,
10 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
11 markings in the margins).

12 A Party or Non-Party that makes original documents available for inspection need not
13 designate them for protection until after the inspecting Party has indicated which documents it
14 would like copied and produced. During the inspection and before the designation, all of the
15 material made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting
16 Party has identified the documents it wants copied and produced, the Producing Party must
17 determine which documents, or portions thereof, qualify for protection under this Order. Then,
18 before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL
19 legend” to each page that contains Protected Material. If only a portion of the material on a page
20 qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
21 by making appropriate markings in the margins).

22 (b) for testimony given in depositions that the Designating Party identifies the Disclosure
23 or Discovery Material on the record, before the close of the deposition all protected testimony.

24 (c) for information produced in some form other than documentary and for any other
25 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
26 or containers in which the information is stored the legend “CONFIDENTIAL.” If only a portion
27 or portions of the information warrants protection, the Producing Party, to the extent practicable,
28 shall identify the protected portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the Designating Party's
3 right to secure protection under this Order for such material. Upon timely correction of a
4 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
5 in accordance with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
8 confidentiality at any time that is consistent with the Court's Scheduling Order.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
10 under Local Rule 37.1 et seq.

11 6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating
12 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
13 unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions.
14 Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties
15 shall continue to afford the material in question the level of protection to which it is entitled under
16 the Producing Party's designation until the Court rules on the challenge.

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
19 produced by another Party or by a Non-Party in connection with this Action only for prosecuting,
20 defending or attempting to settle this Action. Such Protected Material may be disclosed only to the
21 categories of persons and under the conditions described in this Order. When the Action has been
22 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
23 DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a location and in
25 a secure manner that ensures that access is limited to the persons authorized under this Order.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
27 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
28 information or item designated "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees
2 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information
3 for this Action;

4 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party
5 to whom disclosure is reasonably necessary for this Action;

6 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
7 reasonably necessary for this Action and who have signed the "Acknowledgment and Agreement
8 to Be Bound" (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters and their staff;

11 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom
12 disclosure is reasonably necessary for this Action and who have signed the "Acknowledgment and
13 Agreement to Be Bound" (Exhibit A);

14 (g) the author or recipient of a document containing the information or a custodian or other
15 person who otherwise possessed or knew the information;

16 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom
17 disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign
18 the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential
19 information unless they sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
20 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
21 deposition testimony or exhibits to depositions that reveal Protected Material may be separately
22 bound by the court reporter and may not be disclosed to anyone except as permitted under this
23 Stipulated Protective Order; and

24 (i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon
25 by any of the parties engaged in settlement discussions or appointed by the Court.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
2 LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party
5 must:

6 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
7 of the subpoena or court order unless prohibited by law;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
9 other litigation that some or all of the material covered by the subpoena or order is subject to this
10 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
12 Designating Party whose Protected Material may be affected.

13 If the Designating Party timely seeks a protective order, the Party served with the subpoena
14 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
15 before a determination by the court from which the subpoena or order issued, unless the Party has
16 obtained the Designating Party’s permission. The Designating Party shall bear the burden and
17 expense of seeking protection in that court of its confidential material and nothing in these
18 provisions should be construed as authorizing or encouraging a Receiving Party in this Action to
19 disobey a lawful directive from another court.

20 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
21 LITIGATION

22 (a) The terms of this Order are applicable to information produced by a Non-Party in this
23 Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
24 connection with this litigation is protected by the remedies and relief provided by this Order.
25 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional
26 protections.

1 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
2 Party's confidential information in its possession, and the Party is subject to an agreement with the
3 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

4 (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of
5 the information requested is subject to a confidentiality agreement with a Non-Party;

6 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this
7 Action, the relevant discovery request(s), and a reasonably specific description of the information
8 requested; and

9 (3) make the information requested available for inspection by the Non-Party, if requested.

10 (c) If the Non-Party fails to seek a protective order from this court within 14 days of
11 receiving the notice and accompanying information, the Receiving Party may produce the Non-
12 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks
13 a protective order, the Receiving Party shall not produce any information in its possession or control
14 that is subject to the confidentiality agreement with the Non-Party before a determination by the
15 court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
16 seeking protection in this court of its Protected Material.

17 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
19 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
20 the Receiving Party must immediately (a) notify in writing the Designating Party of the
21 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
22 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
23 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
24 Agreement to Be Bound" that is attached hereto as Exhibit A.

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
2 MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain inadvertently
4 produced material is subject to a claim of privilege or other protection, the obligations of the
5 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
6 is not intended to modify whatever procedure may be established in an e-discovery order that
7 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d)
8 and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or
9 information covered by the attorney-client privilege or work product protection, the parties may
10 incorporate their agreement in the stipulated protective order submitted to the court provided the
11 court so allows.

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
14 its modification by the Court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order,
16 no Party waives any right it otherwise would have to object to disclosing or producing any
17 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
18 Party waives any right to object on any ground to use in evidence of any of the material covered by
19 this Protective Order.

20 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material
21 must comply with Local Civil Rule 79-5. Protected Material may only be filed under seal pursuant
22 to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's
23 request to file Protected Material under seal is denied by the court, then the Receiving Party may
24 file the information in the public record unless otherwise instructed by the court.

25 13. FINAL DISPOSITION

26 After the final disposition of this Action, as defined in paragraph 4, within 60 days of a
27 written request by the Designating Party, each Receiving Party must return all Protected Material
28 to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material"

1 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
2 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,
3 the Receiving Party must submit a written certification to the Producing Party (and, if not the same
4 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category,
5 where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
6 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format
7 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel
8 are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
9 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
10 work product, and consultant and expert work product, even if such materials contain Protected
11 Material. Any such archival copies that contain or constitute Protected Material remain subject to
12 this Protective Order as set forth in Section 4 (DURATION).

13 14. VIOLATION

14 Any violation of this Order may be punished by appropriate measures including, without
15 limitation, contempt proceedings and/or monetary sanctions.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: January 22, 2019

SERENDIB LAW FIRM, APC

3
4 By: /s/ Maya Serkova
Maya Serkova

5
6 Attorney for Plaintiff

7 Dated: January 22, 2019


MOSER LAW CO.

8
9 By: /s/ Hilarie Bako
Hilarie Bako

10
11 Attorneys for Defendant
BANK OF AMERICA, N.A.

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13 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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15 Dated: January 30, 2019



HON. JEAN P. ROSENBLUTH
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United States District Court for
the Central District of California on [date] in the case of Galvan v. Bank of America, N.A. Case
No. 2:18-cv-8648-FMO-JPR. I agree to comply with and to be bound by all the terms of this
Stipulated Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
not disclose in any manner any information or item that is subject to this Stipulated Protective Order
to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central
District of California for enforcing the terms of this Stipulated Protective Order, even if such
enforcement proceedings occur after termination of this action. I hereby appoint
_____ [print or type full name] of
_____ [print or type full address and telephone number]
as my California agent for service of process in connection with this action or any proceedings
related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

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Maya Serkova and Dimuth Amaratunge
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MOSER LAW CO.

By: /s/ Hilarie Bako
Hilarie Bako

Attorney for Defendant
BANK OF AMERICA, N.A.